IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 902 (MS) OF 2004

Brijendra Singh and Others. .....Petitioners.

Versus

H.N.B. Garhwal University and Others. .....Respondents.

04.11.2004

Hon'ble Rajesh Tandon, J.

Heard Sri Sharad Sharma assisted by Sri Jagdish Singh Bisht, counsel for the petitioners.

By the present writ petition, the petitioners have prayed for a writ of mandamus commanding the respondents to check the answer-book of the petitioners for M.A. previous English except American Literature checked through an independent subject expert.

Briefly stated, the petitioners took admission in M.A. English Previous year 2003-04. The details have been given in the writ petition that the entire bunch of the petitioners have qualified in High School, Intermediate and Graduation in various subjects and with different percentages. However, they were given admission in M.A. English Previous year.

Counsel for the petitioner Sri Sharad Sharma has submitted that their answer-books relating to the papers of English examination except the American Literature paper were not checked in a proper manner resulting in awarding a low percentage of marks. Petitioners, therefore, have prayed for re-valuation and rechecking of the answer-books.

A perusal of the writ petition shows that the entire set of the petitioners has appeared in the examination and all of them have been given the lower marking. It is the case, where the respondents should take initiative to look the grievances of the petitioners by an expert after taking into consideration that the petitioners have appeared in the examination and all of them have the same grievances.

Petitioners have already filed a representation before the respondent, where they have stated that their career have been ruined and they are brilliant students. It is desirable in the interest of justice that in order to create transparency between the students and the university concerned, the University Authorities should take into account the grievance of the petitioners for re-valuation and re-checking by an expert in the particular subjects along with students.

The University Authorities are directed to look into the copies. The representation filed by the petitioners may be disposed of in the aforesaid terms keeping in view the career of the students in the light of the Mohini Jain's case. The observations of the Apex Court are quoted below:-

"Right to life" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

The fundamental rights guaranteed under Part III of the constitution of India including the right to freedom of speech

and expression and other rights under Articl3 19 cannot be appreciated and fully enjoyed unless and citizen is educated and is conscious of his individualistic dignity.

The "right to education" therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The state is under a constitutional mandate to provide educational institutions at all levels for the benefits of the citizens. The educational institution must function to the best advantage of the citizens. Opportunity to acquire cannot be confined to the richer section of the society."

Subject to the aforesaid observations, the respondents are directed to decide the representation by 30th November, 2004.

Consequently the writ petition is disposed of.

Copy of the order may be given today.

(RAJESH TANDON, J.)

04.11.2004

P.S.R.